

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Claimant alleges accidental injury while working for respondent in its facility in Kansas City, Missouri. Claimant began working for respondent in January 1988 and has continued working in the state of Missouri since that time. The parties acknowledge that the claimant's employment with respondent occurred entirely in Missouri.

K.S.A. 44-506 provides:

That the workmen's compensation act shall apply also to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides

As the parties have all agreed that the claimant's place of employment with respondent was the state of Missouri, in order for the Kansas Workers Compensation Act to apply, it is necessary that the contract between claimant and respondent was formed in Kansas. A contract is considered made when and where the last act necessary for its formation is done. Neumer v. Yellow Freight System, Inc., 220 Kan. 607, 556 P.2d 202 (1976).

Claimant argues that the contract of employment was finalized during a telephone conversation from respondent to claimant at his home in Topeka, Kansas. Respondent, on the other hand, argues that certain administrative requirements had to be met by claimant in the state of Missouri in order for the contract to have been fully finalized. After reviewing the evidence, the Appeals Board find that claimant's argument is supported by the evidence. Not only does claimant testify to the completion of the contract during that telephone conversation, but a letter from respondent's representative, Edward N. Thompson, Jr., on December 18, 1987, states "I would like to confirm our job offer and your acceptance of that offer. Welcome to AT&T."

While the letter did go on to discuss certain contingencies which needed to be met by claimant, it is clear from the language of the letter that an offer and an acceptance had been made prior to those contingencies occurring in the state of Missouri. As this offer occurred while claimant was at his home in Topeka, Kansas, the Appeals Board finds the last act necessary to form that contract occurred with claimant's acceptance of the offer. Therefore, the Kansas Workers Compensation Act has jurisdiction over this employment relationship and any injury suffered by claimant.

With regard to whether claimant suffered accidental injury arising out of and in the course of employment, the Appeals Board acknowledges that there were certain activities undertaken by claimant outside of his employment which may have aggravated his

condition. However, the record supports claimant's argument that the several years of work-related keyboard activity were more probably than not responsible for claimant's bilateral upper extremity problems. In addition, the June 17, 1999, medical report of Truett L. Swaim, M.D., states that, within a reasonable degree of medical certainty, claimant has carpal tunnel syndrome and "the carpal tunnel syndrome is substantially causation related to his employment at AT&T."

For preliminary hearing purposes, the Appeals Board finds claimant has also proven that he suffered accidental injury arising out of and in the course of his employment with respondent.

The issue dealing with claimant's entitlement to temporary total disability compensation does not give rise to Appeals Board jurisdiction on an appeal from a preliminary hearing. See K.S.A. 1997 Supp. 44-534a and K.S.A. 1996 Supp. 44-551. Therefore, the respondent's appeal of that issue is dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the order of Administrative Law Judge Robert H. Foerschler dated July 13, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

c: Michael W. Downing, Kansas City, MO
Steven C. Alberg, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director